

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

1

Court Minutes

November 17, 2008

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Scotland, Presiding Justice; Blease, Associate Justice; Robie, Associate Justice; and Haskett, bailiff.

C054545 THE PEOPLE v. MARIETTA DABANIAN

Cause called. John L. Staley, court appointed counsel, argued for appellant. Harry Joseph Columbo, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:11 a.m., the court recessed. At 10:15 a.m., the court reconvened with Scotland, Presiding Justice; Davis, Associate Justice; and Robie, Associate Justice.

C056086 GONZALES et al. v. VALLEY RIVCO, INC.

Cause called. Douglas Gessell argued for appellant. Eugene F. West argued for respondent. Cause submitted.

At 10:42 a.m., the court recessed. At 10:44 a.m., the court reconvened with Sims, Associate Justice; Robie, Associate Justice; and Butz, Associate Justice.

C054887 THE PEOPLE v. PAHUA LO

Cause called. George M. Hendrickson, Deputy Attorney General, argued for appellant. Jodie Berger argued for respondent. Cause submitted.

At 11:01 a.m., the court recessed. At 11:02 a.m., the court reconvened.

C055057 THE PEOPLE v. KANWALJIT HUNDAL

Cause called. Kevin A. Hicks, Deputy District Attorney, argued for appellant Van Vuren. Kyle R. Knapp argued for appellant Hundal. Peter H. Smith, Deputy Attorney General, argued for respondent. Cause submitted.

CONSOLIDATED WITH

C055128 THE PEOPLE v. KANWALJIT HUNDAL; CLAIRE VAN VUREN

Cause called. Kevin A. Hicks, Deputy District Attorney, argued for appellant Van Vuren. Kyle R. Knapp argued for appellant Hundal. Peter H. Smith, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:35 a.m., the court recessed. At 2:07 p.m., the court reconvened with Nicholson, Associate Justice; Robie, Associate Justice; and Butz, Associate Justice.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

2

Court Minutes

November 17, 2008, Continued

C054140 THE PEOPLE v. LENG VANG et al.

Cause called. Randy S. Kravis, court appointed counsel, argued for appellant Lee. Susan K. Keiser, court appointed counsel, argued for appellant Thao. Rebecca P. Jones, court appointed counsel, argued for appellant Vang. Mark A. Johnson, Deputy Attorney General, argued for respondent. Cause submitted.

CONSOLIDATED WITH

C054268 THE PEOPLE v. XUE THAO

Cause called. Randy S. Kravis, court appointed counsel, argued for appellant Lee. Susan K. Keiser, court appointed counsel, argued for appellant Thao. Rebecca P. Jones, court appointed counsel, argued for appellant Vang. Mark A. Johnson, Deputy Attorney General, argued for respondent. Cause submitted.

At 2:57 p.m., the court recessed until 9:30 a.m., Tuesday, November 18, 2008.

C054676 THE PEOPLE v. KENNETH RUSHING (Certified For Partial Publication)

Defendant's constitutional claims on appeal are dismissed and the judgment is affirmed.

SIMS, J.

We Concur: Scotland, P.J.

Robie, J.

C055080 THE PEOPLE v. LANGIMA'A FAULALO et al. (Not For Publication)

The judgments of both defendants are modified to add parole revocation fines pursuant to Penal Code section 1202.45 in the amount of \$10,000. As so modified, the judgments are affirmed.

HULL, J.

We Concur: Raye, Acting P.J.

Butz, J.

C056102 THE PEOPLE v. LAYFAYETTE TONEY (Not For Publication)

The judgment is affirmed.

HULL, J.

We Concur: Sims, Acting P.J.

Davis, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

3

Court Minutes

November 17, 2008, Continued

- C057618 THE PEOPLE v. LOGAN DUANE HURSH (Not For Publication)**
The judgment is affirmed.
ROBIE, J.
We Concur: Nicholson, Acting P.J.
Morrison, J.
- C058319 THE PEOPLE v. (Not For Publication)**
RAYMOND WILLARD McLAUGHLIN
The judgment is affirmed.
ROBIE, J.
We Concur: Nicholson, Acting P.J.
Morrison, J.
- C057002 ARCEO v. MILLER (Not For Publication)**
The judgment is affirmed. Costs are awarded to respondent. ...
BLEASE, J.
We Concur: Scotland, P.J.
Butz, J.
- C056710 In re A.N.; SACRAMENTO COUNTY (Not For Publication)**
DEPARTMENT OF HEALTH AND
HUMAN SERVICES v. S.M.
Appellant's claims regarding S.C. are stricken. The orders of the juvenile
court as to the minor, A.N., are affirmed.
CANTIL-SAKAUYE, J.
We Concur: Sims, Acting P.J.
Hull, J.

November 18, 2008

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Sims, Associate Justice; Davis, Associate Justice; Nicholson, Associate Justice; and Harper, bailiff.

- C056038 THE PEOPLE v. BRENTON CLAY STANPHILL**
Cause called. Julia L. Bancroft, court appointed counsel, argued for appellant. Alison Elle Aleman, Deputy Attorney General, argued for respondent. Cause submitted. Cause called.

At 9:59 a.m., the court recessed. At 10:00 a.m., the court reconvened.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

4

Court Minutes

November 18, 2008, Continued

C057239 DEES v. 520 CAPITOL MALL, INC.

Cause called. Jean Schaefer argued for appellant. Marc C. Gessford argued for respondent. Cause submitted.

At 10:09 a.m., the court recessed. At 10:13 a.m., the court reconvened with Raye, Associate Justice; Robie, Associate Justice; and Cantil-Sakauye, Associate Justice.

C057219 THE PEOPLE v. JASON GAUL

Cause called. Francine R. Tone, court appointed counsel, argued for appellant. Jeffrey A. White, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:27 a.m., the court recessed. At 10:28 a.m., the court reconvened.

C056061 THE PEOPLE v. DAVID JON DILLION

Cause called. Susan Pochter Stone, court appointed counsel, argued for appellant. Paul A. Bernardino, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:47 a.m., the court recessed. At 10:48 a.m., the court reconvened.

C054131 RENNA v. THE HENRY COMPANY

Cause called. Eric D. McFarland argued for appellant. Michael K. Johnson argued for respondent. Cause submitted.

At 11:12 a.m., the court recessed. At 2:07 p.m., the court reconvened with Davis, Associate Justice; Raye, Associate Justice; and Butz, Associate Justice.

**C055799 HEALTH NET OF CALIFORNIA, INC. v.
DEPARTMENT OF HEALTH SERVICES**

Cause called. Michael J. Daponte argued for and Kevin M. Fong and Carrie L. Bonnington appeared only for appellant. Kara Read-Spangler, Deputy Attorney General, argued for respondent. Cause submitted.

At 2:47 p.m., the court recessed. At 2:49 p.m., the court reconvened with Morrison, Associate Justice; Robie, Associate Justice; and Cantil-Sakauye, Associate Justice.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

5

Court Minutes

November 18, 2008, Continued

C056202 THE PEOPLE v. AARON RAY ALLMAN

Cause called. Laurie Wilmore, court appointed counsel, argued for appellant. Jeffrey A. White, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:03 p.m., the court recessed. At 3:07 p.m., the court reconvened with Hull, Associate Justice; Robie, Associate Justice; and Cantil-Sakauye, Associate Justice.

C054292 CONTOIS et al. v. ALUMINUM PRECISION PRODUCTS, INC., et al.

Cause called. Elise R. Sanguinetti argued for and Peter J. Hinton appeared only for appellants. Charles V. Berwanger argued for respondents Kingman. Martin W. Johnson argued for and Donald P. Eichhorn appeared only for respondents Aluminum. Cause submitted.

At 3:39 p.m., the court recessed until Friday, November 21, 2008.

C055046 PEOPLE v. WILLIE BELTON (Certified For Publication)

The judgment is affirmed.
DAVIS, Acting P.J.
We Concur: Nicholson, J.
Hull, J.

C055337 PEOPLE v. JERRY WAYNE PERRYMAN (Not For Publication)

The judgment is affirmed.
DAVIS, Acting P.J.
I Concur: Robie, J.
I Concur in the result:
Nicholson, J.

C055772 PEOPLE v. JUAN PEYTON MENENDEZ (Not For Publication)

The judgment is affirmed.
The trial court is directed to amend the abstract of judgment to reflect defendant's assault with a firearm conviction was count two, not count one, and that the enhancement found true for such conviction is section 12022.5, subdivision (a), instead of subdivision (a) (1). The trial court shall forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.
CANTIL-SAKAUYE, J.
We Concur: Nicholson, Acting P.J.
Robie, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

6

Court Minutes

November 18, 2008, Continued

- C056414 PEOPLE v. WISDOM AKWAFO OFOE (Not For Publication)**
The judgment is affirmed.
ROBIE, J.
We Concur: Scotland, P.J.
Nicholson, J.
- C058042 PEOPLE v. CARL D. MITCHELL (Not For Publication)**
Appellant's sentence is vacated. The matter is remanded and the trial court is directed to recalculate defendant's sentence in light of the prior decision by this court that the prosecution proved only three prior serious felony convictions under section 667, subdivision (a). After recalculating defendant's sentence, the trial court is further directed to prepare an amended abstract of judgment that accurately reflects defendant's convictions and his sentence, and deliver the amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.
CANTIL-SAKAUYE, J.
We Concur: Sims, Acting P.J.
Hull, J.
- C058562 PEOPLE v. HERB LEE GADBURY (Not For Publication)**
The criminal laboratory analysis fee imposed pursuant to Health and Safety Code section 11372.5 shall be stricken. As modified, the judgment is affirmed. The court shall amend the abstract of judgment and send a copy of the amendment to the Department of Corrections and Rehabilitation.
ROBIE, J.
We Concur: Nicholson, Acting P.J.
Morrison, J.
- C057251 In re J.M. et al.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES v. L.J. et al. (Not For Publication)**
The orders of the juvenile court are affirmed.
DAVIS, Acting P.J.
We Concur: Nicholson, J.
Hull, J.
- C058414 In re JAMES H. et al.; SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY v. A.H. et al. (Not For Publication)**
The orders of the juvenile court are affirmed.
HULL, J.
We Concur: Sims, Acting P.J.
Cantil-Sakauye, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

7

Court Minutes

November 18, 2008, Continued

**C058609 In re M.C.; SAN JOAQUIN COUNTY (Not For Publication)
HUMAN SERVICES AGENCY v. S.S.**

The transfer order is affirmed, and the matter is remanded to the juvenile court with directions to comply with the inquiry and notice provisions of ICWA, if it has not already done so. After proper notice under ICWA, if it is determined that the minor is an Indian child and ICWA applies to these proceedings, appellant is entitled to petition the juvenile court to invalidate orders that violated ICWA. ...

DAVIS, Acting P.J.

We Concur: Nicholson, J.
 Hull, J.

November 19, 2008

**C057230 THE PEOPLE v. (Not For Publication)
BRETT ALLEN MCGRAW**

The judgment is reversed and the case remanded to the trial court for a new commitment trial consistent with this opinion.

HULL, J.

We Concur: Raye, Acting P.J.
 Morrison, J.

**C054868 MISSION HOSPITAL REGIONAL (Certified For Publication)
MEDICAL CENTER et al. v. SHEWRY**

**KAISER FOUNDATION HOSPITALS et al.
v. SHEWRY**

The judgment is reversed and the matter is remanded to the trial court. The trial court shall issue a writ of mandate enjoining the Department from utilizing section 32 in its calculations of plaintiffs' reimbursement rates for the state fiscal year 2004-2005.

Costs on appeal are awarded to plaintiffs. ...

NICHOLSON, J.

We Concur: Sims, Acting P.J.
 Cantil-Sakauye, J.

C056527 PITTS v. CITY OF SARAMENTO et al. (Not For Publication)

The judgment is affirmed.

DAVIS, J.

We Concur: Scotland, P.J.
 Blease, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

8

Court Minutes

November 19, 2008, Continued

**C055656 PRATT v. UNION PACIFIC RAILROAD (Certified For Publication)
COMPANY**

BY THE COURT:

The opinion of this court filed November 12, 2008, in the above entitled case is modified as follows:

1. On page 18, please delete footnote 12 in its entirety.

This modification does not effect a change in the judgment.

BY THE COURT:

BLEASE, Acting P.J.

Butz, J.

November 20, 2008

**C051803 THE PEOPLE v. (Certified For Partial Publication)
MICHAEL AARON DAVIS**

C051963 THE PEOPLE v. JAVIER MUNOZ

The judgment as to Munoz is affirmed. The judgment as to Davis is modified to award him 625 days of presentence custody credits and otherwise affirmed. The trial court is directed to forward to the Department of Corrections and Rehabilitation new abstracts of judgment in accordance with this opinion.

MORRISON, J.

We Concur: Davis, Acting P.J.

Hull, J.

**C056166 THE PEOPLE v. (Not For Publication)
BOBBY PHONETT DAVIS**

The judgment is affirmed.

BUTZ, J.

We Concur: Sims, Acting P.J.

Hull, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

9

Court Minutes

November 21, 2008

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Raye, Associate Justice; Hull, Associate Justice; Cantil-Sakauye, Associate Justice; and Horner, bailiff.

C055331 THE PEOPLE v. LANDON BYRON JACKSON

Cause called. John Hardesty, court appointed counsel, argued for appellant. Craig S. Meyers, Deputy Attorney General, argued for respondent. Cause submitted. Cause called.

At 10:07 a.m., the court recessed until Monday, November 24, 2008.

C054545 THE PEOPLE v. MARIETTA DABANIAN (Not For Publication)

The judgment with respect to count 4 is reversed; the judgment with respect to counts 1, 3, and 5 is affirmed; and the case is remanded to the trial court for resentencing.

ROBIE, J.

We Concur: Scotland, P.J.

Blease, J.

C057500 THE PEOPLE v. DONNELL COX (Certified For Publication)

The judgment is affirmed.

ROBIE, J.

We Concur: Davis, Acting P.J.

Butz, J.

**C057392 LEWIS v. WORKERS' COMPENSATION (Certified For Publication)
APPEALS BOARD; BEUTLER HEATING
AND AIR CONDITIONING, et al.**

The decision of the WCAB is annulled and the matter is remanded for further proceedings consistent with this opinion. The parties are to bear their own costs in this proceeding.

DAVIS, Acting P.J.

We Concur: Nicholson, J.

Cantil-Sakauye, J.

**C056679 THE PEOPLE v. SPENCER LAMAR BORNES
BY THE COURT:**

Appellant's petition for rehearing is denied.

SIMS, Acting P.J.